

EXHIBIT A

David S. Casey, Jr., SBN 060768
dcasey@cglaw.com
Jeremy Robinson, SBN 188325
jrobinson@cglaw.com
Angela Jae Chun, SBN 248571
ajc@cglaw.com
P. Camille Guerra, SBN 326546
camille@cglaw.com
James M. Davis, SBN 301636
jdavis@cglaw.com
**CASEY GERRY SCHENK
FRANCAVILLA BLATT &
PENFIELD, LLP**
110 Laurel Street
San Diego, CA 92101
Telephone: (619) 238-1811
Facsimile: (619) 544-9232

*Attorneys for Certain Victims
From the Camp Fire and
2017 North Bay Fires*

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

In re:

PG&E CORPORATION

-and-

**PACIFIC GAS AND ELECTRIC
COMPANY,**

Debtors

- ☐ Affects PG&E Corporation
- ☐ Affects Pacific Gas and Electric Company
- ☒ Affects both Debtors

** All papers shall be filed in the Lead
Case, No. 19-3088 (DM)*

Bankruptcy Case
No.: 19-30088 (DM)

Chapter 11
(Lead Case) (Jointly Administered)

**AMENDED MOTION TO EXPUNGE
CLASS PROOF OF CLAIM FILED
BY GER HOSPITALITY, LLC**

Hon. Dennis Montali

Date: April 29, 2020
Time: 10:00 a.m. (Pacific Time)
Place: United States Bankruptcy Court
Courtroom 17, 16th Floor
San Francisco, CA 94102

1 **TO THE HONORABLE DENNIS MONTALI, UNITED STATES**
2 **BANKRUPTCY JUDGE:**

3 Claimants represented by the undersigned are victims of the Atlas, Redwood,
4 and Camp Fires. These claimants respectfully represent:

5 **I. RELIEF REQUESTED**

6 Claimants represented by the undersigned file this Amended Motion¹ pursuant
7 to 11 U.S.C. § 502 and Federal Rule of Bankruptcy Procedure 9014(c), seeking entry
8 of an Order expunging from the record class proof of claim no. 59725 filed on
9 October 18, 2019 (“Class Proof of Claim”) by GER Hospitality, LLC, dba Aventine
10 Glen Ellen, for itself and on behalf of all others similarly situated (“GER
11 Hospitality”).

12 **II. JURISDICTION**

13 This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157
14 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

15 **III. PRELIMINARY STATEMENT**

16 Although a Bankruptcy Court has the discretion to allow class proofs of claims,
17 it generally refuses to do so where the putative class has not been certified pre-
18 petition, the putative class members have all received actual or constructive notice,
19 and where class claims would adversely impact the administration of the estate. These
20 are the circumstances surrounding GER Hospitality’s Class Proof of Claim and
21 therefore it should be expunged.

22 At no point after filing its complaint in state court did GER Hospitality move
23
24

25 ¹ Claimants make this request in the form of a motion to expunge GER Hospitality’s class proof of claim. *See,*
26 *e.g., In re Sequoia Senior Solutions, Inc.*, 2017 WL 2533345, at *2 (Bkrcty.N.D.Cal., 2017) (debtor filed motion to
27 expunge in response to class proof of claim and before claimant moved for application of Rule 7023 of the
28 Federal Rules of Bankruptcy Procedure). Claimants have standing as general creditors to object to GER
Hospitality’s class proof of claim. *See, e.g., In re Charter Co.*, 68 B.R. 225, 228 (Bankr. M.D. Fla. Pa. 1995) (“Since
the law does not impose a duty on the debtor-in-possession to act in the best interest of all general creditors,
the Court will not disregard the plain language of § 502(a) and limit the right of general creditors to object to
the allowance of a proof of claim in a chapter 11 proceeding.”)

1 for certification. And at no point after filing its Class Proof of Claim did GER
2 Hospitality move this Court to permit class treatment of its claims. Indeed, GER
3 Hospitality has taken no action at all to certify its putative class in any forum since
4 commencing litigation on December 22, 2017.

5 While class treatment may be appropriate in bankruptcy proceedings, that is not
6 the case where the putative class members have received notice of the bankruptcy case
7 and the bar date. *See In re Sacred Heart Hosp. of Norristown*, at 22 (“[I]f the putative
8 unnamed class members have clearly received actual or constructive notice of the
9 bankruptcy case and the bar date, denial of the implementation of the class proof of
10 claim device appears advisable.”) Exhaustive notice procedures, an extension of the
11 original bar date, and appointment of a Special Claims Representative has
12 accomplished a high percentage of claims filed. Indeed, this Court previously cited the
13 “robust” notice procedures that were “carefully calculated to reach all potential
14 claimants,” as a reason to deny a motion for class certification. *See Order Denying*
15 *Class Representative’s Motion to Extend Application of FRCP 23 to Class Proofs of*
16 *Claim*. [Docket No. 4925.]

17 Most importantly, this Court should refuse to allow GER Hospitality’s Class
18 Proof of Claim because of the adverse impact it would have on the administration of
19 the estate. Its amended Class Proof of Claim, in which it now seeks non-economic
20 damages, would compound the adverse impact and would create new procedural
21 hurdles absent in normal bankruptcy proceedings, require a new round of notices and
22 opportunities to opt out under Rule 23, and create the need for pre-certification
23 discovery. Claimants who have already filed their claims timely may be subject to
24 delay and a diminished fund for compensation of their injuries. In short, there is much
25 to lose and little to gain.

26 Although the foregoing reasons are enough to justify expunging GER
27 Hospitality’s Class Proof of Claim, there is yet another reason: It cannot, as it must,
28 satisfy Civil Rule 23. As discussed further below, there is no risk of inconsistent

1 decisions warranting certification under Civil Rule 23(b)(1), nor is there any
2 “superiority” of class proceedings that would warrant certification under Civil Rule
3 23(b)(3).

4 For all these reasons and those set forth below, this Court should expunge GER
5 Hospitality’s class proof of claim.

6 **IV. BACKGROUND**

7 *a. The Chapter 11 Cases*

8 On January 29, 2019 PG&E Corporation and Pacific Gas and Electric Company
9 (collectively, “PG&E”) commenced with this Court voluntary cases under Chapter 11
10 of Title 11 of the United States Code (the “Bankruptcy Code”). PG&E continues to
11 operate their business and manage their properties as debtors in possession pursuant to
12 sections 1107(a) and 1108 of the Bankruptcy Code. PG&E’s Chapter 11 cases are
13 being jointly administered for procedural purposes only pursuant to Rule 1015(b) of
14 the Federal Rules of Bankruptcy Procedure.

15 *b. The Bar Date Orders*

16 On May 1, 2019, PG&E filed a motion [Docket No. 1784] requesting entry of
17 an order (i) establishing October 21, 2019 as the last date to file proofs of claim in the
18 Chapter 11 cases (the “Original Bar Date”), (ii) establishing the form and manner
19 thereof, and (iii) approving PG&E’s plan for providing notice of the Original Bar Date
20 and other important deadlines and information to all creditors and potential creditors,
21 including publication and other supplemental noticing procedures.

22 By order dated July 1, 2019, the Court granted PG&E’s motion, which
23 approved the Original Bar Date and PG&E’s notice procedures, as modified prior to
24 and at the hearing. [Docket No. 2806] The Court subsequently considered a
25 stipulation between the Debtors and the Official Committee of Tort Claimants and
26 entered an order [Docket No. 4672] which extended the Original Bar Date to
27 December 31, 2019 (the “Extended Bar Date”).
28

1 ***c. The Notice Procedures***

2 Consistent with the Court’s July 1, 2019 order, over 6.5 million Bar Date
3 notices were directly mailed to potential claimants, which included notice of the
4 deadline for filing claims and related procedures as well as an applicable proof of
5 claim form.

6 In addition to providing actual notice, PG&E implemented a Supplemental
7 Notice Plan to provide extensive constructive notice to known and unknown claimants
8 using traditional and non-traditional means. The Supplemental Notice Plan included
9 publication in print, online, social, radio, and television media outlets. That Plan
10 generated over 730,000,000 opportunities to see the Bar Date notice.

11 In the order extending the Original Bar Date, the Court appointed Michael G.
12 Kasolas to serve as a Special Claims Representative for the benefit of Unfiled Fire
13 Claimants and was given “broad discretion” to identify and locate unfiled fire
14 claimants and implement procedures to provide notice of the Extended Bar Date
15 thereto, among other tasks.

16 The Claims Representative’s outreach effort to identify, locate and assist fire
17 victims who were eligible to file claims but failed to do so by the original bar date was
18 largely successful. In the Second and Final Report of the Court Appointed Claims
19 Representative [ECF No. 5432], the Claims Representative reported that the
20 “expansive outreach effort” resulted in an additional 9,265 unique individuals or
21 entities filing wildfire proofs of claim.

22 ***d. The Putative Class Action and Class Proof of Claim***

23 On December 22, 2017, GER Hospitality filed a putative class action complaint
24 in the Superior Court of the State of California for the County of Sonoma, case no.
25 SCV261723. On February 5, 2019, PG&E sent a Notice of Bankruptcy Filing and
26 Imposition of Automatic Stay, notifying GER Hospitality that the proceeding was
27 stayed pursuant to section 362(a) of the Bankruptcy Code. GER Hospitality’s putative
28 class was not certified before the January 29, 2019 petition date, nor did it ever move

1 for certification. No activity has taken place since the Notice of Bankruptcy.

2 In the complaint, GER Hospitality seeks, on behalf of itself and the putative
3 class, damages to property, loss of business profits, and repair, depreciation, and/or
4 replacement of damaged property, among other things. GER Hospitality defines the
5 putative class as: “All business entities located in Sonoma, Napa, Mendocino, Lake,
6 and Solano Counties who suffered economic losses due to the wildfires that started on
7 or shortly after October 8, 2017...”

8 On January 29, 2019, GER Hospitality filed its class proof of claim, and on the
9 following day it filed additional amendments to its class proof of claim. On October
10 18, 2019, GER Hospitality filed an amended class proof of claim, claim no. 59725.

11 V. ARGUMENT

12 Although the Ninth Circuit has held that Civil Rule 23 is available to
13 bankruptcy claims, it is not applied often. *See Mortland v. Aughney*, No. C 11-00743
14 WHA, 2011 WL 2653515, at *2 (N.D. Cal. July 6, 2011); *see also In re Sacred Heart*
15 *Hosp. of Norristown*, 177 B.R. 16, 22 (Bankr. E.D. Pa. 1995) (“[W]e believe that the
16 class proof of claim device may be utilized in appropriate contexts, **but that such**
17 **contexts should be chosen most sparingly.**”) (Emphasis added). This is because the
18 benefits of class litigation diminish when bankruptcy proceedings are pending. As the
19 *Mortland* court explained: “many of the policy factors supporting class actions are
20 absent in bankruptcy proceedings. Proof-of-claim forms are free, accessible, and easy
21 to fill out, the costly barriers to litigation—which deter many small claims—are
22 reduced. Furthermore, the bankruptcy process is already efficient; it consolidates
23 claims just as a class action does.” *Mortland*, 2011 WL 2653515, at *2.

24 Application of Civil Rule 23 is extended to contested matters by Federal Rule
25 of Bankruptcy Procedure 9014, which grants the court discretion to apply Civil Rule
26 23 to contested matters, including claims objections. *See id.* That discretion is guided
27 by a three-factor framework adopted from *In re Musicland Holding Corp.*, 362 B.R.
28 644, 654 (Bankr. S.D.N.Y. 2007). The court’s inquiry ends if the *Musicland* test

1 counsels against permitting a class proof of claim. *See In re Verity Health Sys. of*
2 *California, Inc.*, No. 2:18-BK-20151-ER, 2019 WL 2461688, at *7 (Bankr. C.D. Cal.
3 June 11, 2019) (“Only if the Court determines that it is appropriate to apply
4 Bankruptcy Rule 7023 to the claims administration process does the Court proceed to
5 determine whether the requirements of Civil Rule 23 have been satisfied.”); *In re*
6 *Craft*, 321 B.R. 189, 198–99 (Bankr. N.D. Tex. 2005) (“[T]he court need not reach the
7 second issue” after declining to invoke Bankruptcy Rule 7023).

8 Here, each of the *Musicland* factors counsels against allowing class claims in
9 bankruptcy. For that reason alone, the court should expunge GER Hospitality’s class
10 proof of claim. However, as discussed below, expungement is also warranted because
11 GER Hospitality cannot – as it must – satisfy the requirements of Civil Rule 23.

12 **a. The Court Should Not Use Its Discretion to Allow Class Proof of**
13 **Claims**

14 Bankruptcy courts have used the three *Musicland* factors to guide their
15 discretion on whether to allow class claims. *See Verity Health Sys.*, 2019 WL
16 2461688, at *7; *In re Musicland Holding Corp.*, 362 B.R. at 654. No factor is
17 dispositive, and one factor may take on greater or less importance in any given case.
18 *Verity Health Sys.*, 2019 WL 2461688, at *7. The three *Musicland* factors ask (i)
19 whether the class was certified pre-petition; (ii) whether the members of the putative
20 class received notice of the bar date; and (iii) whether class certification will adversely
21 affect the administration of the estate. *Id.* at *6. In this case, each *Musicland* factor
22 weighs against allowing GER Hospitality’s class claims.

23 **i. GER Hospitality’s Putative Class Was Never Certified**

24 The first *Musicland* factor weighs against allowing class claims because GER
25 Hospitality’s putative class was not certified before the January 29, 2019 petition, nor
26 was it ever certified. *See Verity Health Sys.*, 2019 WL 2461688, at *8 (“The putative
27 class was not certified prepetition, so the first *Musicland* factors weighs against
28 applying Civil Rule 23 to the claims administration process.”). Even certification pre-
petition does not ensure class treatment in bankruptcy. *See In re Tarragon Corp.*, No.

09-10555 DHS, 2010 WL 3842409, at *3 (Bankr. D.N.J. Sept. 24, 2010) (“In fact, a class action may be certified in a non-bankruptcy court and yet be subsequently disallowed to proceed in class form in the bankruptcy setting.”)

Where there has been no pre-petition certified class, Bankruptcy courts are reluctant to extend Bankruptcy Rule 7023 to allow the filing of class proofs of claim. *See In re Sacred Heart Hosp. of Norristown*, 177 B.R. 16, 22-24 (Bankr. E.D. Pa. 1995) (Bankruptcy court denied class claims because the state class action case had not been previously certified as class); *In re Craft*, 321 B.R. at 189 (declining to apply Bankruptcy Rule 7023 for a proposed class that was “not yet certified”).

GER Hospitality’s delay in moving for class certification further warrants expungement of its class proof of claim. *Id.* at *5 (“Though a class proof of claim may be filed in a bankruptcy court, *a claimant must move for class certification without undue delay.*”) (Emphasis added.); *In re Blockbuster Inc.*, 441 B.R. 239, 241 (Bank. S.D.N.Y. 2011) (noting whether class claimant has moved for certification as a factor guiding the court’s decision whether to allow class proof of claim). There is an especially strong case for expunging GER Hospitality’s class proof of claim, as over a year has passed since the class proof of claim was filed, and it has yet to move for certification. *See Tarragon Corp.*, 2010 WL 3842409, at *5 (“Here, more than a year after the class proof of claim was filed, the Claimant has yet to move for the application of Federal Rule of Civil Procedure 23 pursuant to Bankruptcy Rule 7023. **A class action under these facts works in opposition to the goals of bankruptcy.**”) (Emphasis added).

ii. Class Claimants Have Received Notice of Multiple Bar Dates

The second *Musicland* factor also weighs against allowing class claims because the class claimants have received actual or constructive notice of the multiple Bar Dates. *See In re Sacred Heart Hosp. of Norristown*, 177 B.R. at 22 (“[I]f the putative unnamed class members have clearly received actual or constructive notice of the bankruptcy case and the bar date, denial of the implementation of the class proof of

claim device appears advisable.”) In addition to the actual notice provided to the majority of the potential class members, PG&E implemented an exhaustive noticing campaign that included published notice of the Original Bar Date in *People*, *Sports Illustrated*, *Sunset Magazine*, *The Wall Street Journal*, *USA Today*, and in twenty-seven local newspapers distributed throughout Northern California. PG&E also advertised across 4,000 different websites and social media, engaged social influencers to share information about the Original Bar Date on social media, sponsored Google advertisements, and purchased billboards, streaming video rights, and airtime on television and radio.

To further provide notice and increase the number of claims filed, the Court extended the Original Bar Date and appointed a special claims representative for the benefit of unfiled fire claimants. That special claims representative, Michael G. Kasolas, was given “broad discretion” to identify and locate unfiled fire claimants and implement procedures to provide notice of the Extended Bar Date. Those efforts were largely successful and helped an additional 9,265 unique individuals or entities file wildfire proofs of claim.

In light of the exhaustive noticing campaigns, sophisticated business such as GER Hospitality, as well as the class members it purports to represent, would have received notice of the multiple bar dates.

iii. Class Claims Would Adversely Affect the Administration of the Estate

The third *Musicland* factor also counsels against allowing class claims, as class proceedings would adversely affect the administration of the estate in time and cost. Class proceedings would assuredly cause undue delay: Class claims would create numerous procedural hurdles absent in normal bankruptcy proceedings; create the need for pre-certification discovery; and necessitate new notices and opportunities to opt out under Civil Rule 23. *See In re Ephedra*, 329 B.R. at 5 (“Applying Rule 23 to the class claims now would initiate protracted litigation that might delay distribution of the estate for years. Pre-certification discovery would be needed for three putative

1 class claims with three putative class attorneys. . . If the classes were then certified,
2 notice to class members followed by discovery on the merits and the bankruptcy
3 equivalent of a trial would further delay distribution.”).

4 To borrow the words of S.D.N.Y. Bankruptcy Judge Stuart Bernstein, allowing
5 GER Hospitality’s class claim would “gum up the works” of distributing the estate.
6 *See In re Woodward & Lothrop Holdings, Inc.*, 205 B.R. 365, 376 (Bankr. S.D.N.Y.
7 1997) (“[A] bankruptcy case can proceed no faster than its slowest matter [] and a
8 class action may ‘gum up the works’ because until complete, the bankruptcy court
9 cannot determine the entitlement of the other creditors.”)

10 And yet another reason counsels against allowing class claims: Applying Civil
11 Rule 23 after expiration of the Extended Bar Date would violate the due process rights
12 of those who filed timely claims by giving claimants who failed to do so a “second
13 bite at the apple.” *See Sacred Heart Hosp.*, 177 B.R. at 23 (“Tinkering with an
14 established bar date may raise due process claims of parties who have timely filed
15 claims by originally-established bar dates, since it gives late filers a second bite at an
16 apple which is likely to be less than fully satisfying, and thus effect unfair diminution
17 of the timely filer's share of a distribution”).

18 Accordingly, the Court should expunge GER Hospitality’s Class Proof of Claim
19 because each *Musicland* factor and other important non-*Musicland* factors all strongly
20 counsel against allowing class claims.

21 **b. GER Hospitality Does Not Satisfy the Basic Requirements of Civil**
22 **Rule 23**

23 Although the inquiry should end after deciding that the *Musicland* test strongly
24 weighs against allowing class claims, the Court should also expunge GER
25 Hospitality’s class proof of claim because it does not meet the requirement of Civil
26 Rule 23. Other than attaching its state complaint to the class proof of claim, GER
27 Hospitality has done nothing to demonstrate that it has met the requirements for class
28 certification.

In order to satisfy Civil Rule 23, GER Hospitality must demonstrate that it can

1 be certified as a Rule 23(b)(1) or Rule 23(b)(3) class.² GER Hospitality's putative
2 class cannot be certified as either.

3 Under Rule 23(b)(1), a class may be maintained if "prosecuting separate actions
4 by or against individual class members would create a risk of ... adjudications with
5 respect to individual class members that, as a practical matter, would be dispositive of
6 the interests of the other members not parties to the individual adjudications or would
7 substantially impair or impede their ability to protect their interests." Here, filing
8 individual proofs of claims, as opposed to a class proof of claim, creates no risk of
9 inconsistent decisions that would impair the ability of fire victims to protect their
10 interests. This Court will adjudicate all proofs of claim and therefore there is no risk of
11 other courts issuing inconsistent decisions. *See In re Verity*, 2019 WL 2461688, at
12 *15.

13 GER Hospitality fares no better under a Civil Rule 23(b)(3) analysis. Under
14 Civil Rule 23(b)(3), a class may be maintained if the court finds that the questions of
15 law or fact common to class members predominate over any questions affecting only
16 individual members, and that a class action is superior to other available methods for
17 fairly and efficiently adjudicating the controversy. Superiority tests whether "class
18 litigation of common issues will reduce litigation costs and promote greater
19 efficiency." *In re Ferrero Litigation*, 278 F.R.D. 552, 561 (S.D. Cal. 2011) (*quoting*
20 *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996). Considering
21 the additional procedural hurdles created by class claims, increased discovery costs
22 and attorneys' fees, and undue delay, GER Hospitality cannot demonstrate that class
23 litigation would be superior to normal bankruptcy processes.

24 Indeed, any superiority of class action "vanishes" when there are pending
25 bankruptcy proceedings. *See In re Ephedra*, 329 B.R. at 9 ("This superiority of the
26

27 ² There is a third Rule 23 class action, Rule 23(b)(2), but this would not be appropriate for GER
28 Hospitality's class claims as "the relief sought in the complaint is primarily monetary in nature."
See In re Kibler, No. 00-2604, 2001 WL 388764, at *6 (Bankr. E.D. Cal. Mar. 19, 2001).

1 class action vanishes when the ‘other available method’ is bankruptcy, which
2 consolidates all claims in one forum and allows claimants to file proofs of claim
3 without counsel and at virtually no cost.”); *In re Motors Liquidation Co.*, 447 B.R.
4 150, 163 (Bankr. S.D.N.Y. 2011) (“[T]he inherent simplicity of the bankruptcy
5 process tends to make class action treatment not superior, as a general matter and in
6 this case, because an individual claimant would need only to fill out and return a proof
7 of claim form.”)

8 Accordingly, GER Hospitality cannot demonstrate that it satisfies the
9 requirements of Civil Rule 23. For this additional reason, the Court should expunge its
10 Class Proof of Claim.

11 VI. CONCLUSION

12 For the foregoing reasons, claimants represented by the undersigned
13 respectfully request that this Court enter an order expunging from the record the Class
14 Proof of Claim filed on October 18, 2020 by GER Hospitality, claim no. 59725, in its
15 entirety.

16
17
18 Dated: April 7, 2020

Respectfully submitted,

19
20 **CASEY GERRY SCHENK**
FRANCAVILLA BLATT
& PENFIELD, LLP

21 By: /s/ James M. Davis

22 David S. Casey, Jr.
23 Jeremy Robinson
24 Angela Jae Chun
P. Camille Guerra
James M. Davis

25 Attorneys for Certain Victims
26 From the Camp Fire and
27 2017 North Bay Fires
28